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May 7, 2004

Via ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20036

Re: **Report to Congress Regarding the ORBIT Act**
**IB Docket No. 04-158**

Dear Ms. Dortch,

Stratos Mobile Networks, Inc. and Stratos Communications, Inc. (collectively, "Stratos") hereby submits its comments for the Commission's Report to Congress regarding the Open-market Reorganization for the Betterment of International Telecommunications Act ("ORBIT Act"). Stratos is a leading provider of mobile satellite service to U.S. government and industry, using capacity on satellites operated by Inmarsat Ventures Ltd. ("Inmarsat"), Iridium LLC, and Mobile Satellite Ventures Subsidiary LLC.

Stratos recently filed the attached comments and reply comments in support of Inmarsat's request for a determination that it has privatized in a manner consistent with the ORBIT Act. Through a related series of equity and debt transactions, Inmarsat is now 57% owned by private equity investors. Accordingly, it has achieved independence from former INMARSAT signatories and has substantially diluted the ownership interests of such signatories. It has also conducted a public offering of debt securities, which are now listed on the Luxembourg Stock Exchange and which will soon be registered with the Securities Exchange Commission. Inmarsat's debt securities are therefore subject to transparent and effective securities regulation.

Inmarsat's privatization has achieved the ORBIT Act's goal of ensuring the pro-competitive privatization of former intergovernmental satellite organizations. Accordingly, Inmarsat should be granted unconditional access to the U.S. market. Denying or delaying Inmarsat's full access

to the U.S. market may be good for Inmarsat's competitors, but would not be good for competition in the U.S. or for purchasers of Inmarsat mobile satellite service, such as Stratos and its customers.

If you have any questions about this filing, please contact Alfred Mamlet or Daniel Mah.

Respectfully submitted,

Alfred M. Mamlet
Chung Hsiang Mah
*Counsel for Stratos Mobile Networks, Inc. and Stratos Communications, Inc.*

Encl.

Comments of Stratos Mobile Networks, Inc. (filed Apr. 5, 2004)
Reply Comments of Stratos Mobile Networks, Inc. (filed Apr. 20, 2004)

Cc: (via e-mail, with enclosures)

Andrea Kelly, Satellite Division, International Bureau
Marilyn Simon, Satellite Division, International Bureau

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**



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| In the Matter of | ) | |
| | ) | |
| **INMARSAT VENTURES LIMITED** | ) | File No. SAT-MSC-20040210-00027 |
| | ) | |

## COMMENTS OF STRATOS MOBILE NETWORKS, INC.

Stratos Mobile Networks, Inc. and Stratos Communications Inc. (collectively, "Stratos"), holders of U.S. licenses to operate mobile earth terminals that communicate with various Inmarsat satellites, hereby fully support the request of Inmarsat Ventures Limited ("Inmarsat") for a determination that it has satisfied the independence and initial public offering ("IPO") requirements of the Open-Market Reorganization for the Betterment of International Telecommunications Act ("ORBIT Act").[1]

Stratos is a leading provider of mobile satellite services using the space segment capacity on satellites operated by Inmarsat, Iridium LLC ("Iridium"), Mobile Satellite Ventures LLP ("MSV"). Stratos and the corporate parent, Stratos Global Corporation, are headquartered in Bethesda, Maryland. Inmarsat services are very important to Stratos' customers, which include the U.S. military, State Department, Department of Homeland Security, Federal Bureau of Investigation, Drug Enforcement Administration, Coast Guard, and U.S. state and local

[1] *See* Letter from Alan Auckenthaler, Inmarsat Ventures Limited, to Marlene H. Dortch, Federal Communications Commission (Feb. 10, 2004) ("Inmarsat Letter"). The Inmarsat Letter was placed on public notice on March 5, 2004 and assigned file number SAT-MSC-20040210-00027. *See* Public Notice, SAT-00197 (Mar. 5, 2004).

governments. U.S. Government reliance on Stratos' Inmarsat services has increased significantly since 9/11. The U.S. maritime, fishing, oil and gas, broadcasting and natural resources industries also rely on the Inmarsat services provided by Stratos for their remote communications needs. For Stratos and its customers, Inmarsat provides important competition in the U.S. market to U.S.-based satellite operators. A determination that Inmarsat has satisfied the independence and IPO requirements of the ORBIT Act would ensure the continuity of such competition and important services to Stratos' government and private sector customers.

## I. BACKGROUND

In October 2001, the Federal Communications Commission authorized various Inmarsat service providers, including several Stratos affiliates, to provide mobile satellite service via Inmarsat satellites.[2] In doing so, the Commission determined that Inmarsat had met all of the criteria for privatization under the ORBIT Act, except the independence requirement under section 621(2) of that Act, which in turn required the conduct of an IPO in accordance under section 621(5)(A) & (B). Accordingly, the Commission conditioned the grant of the authorizations to Stratos and other Inmarsat providers on Inmarsat's compliance with these requirements.

As described in more detail in Inmarsat's request, on December 17, 2003, private equity funds advised by Apax Partners and Permira acquired a combined 52.28% beneficial ownership interest in the newly-formed Inmarsat Group Holdings Limited, which is now the ultimate parent of Inmarsat Ventures Limited and its affiliates. This acquisition was financed in part through an IPO of Inmarsat debt securities, which closed on February 3, 2004. Inmarsat's

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[2] *See Comsat Corporation, et al.*, 16 FCC Rcd. 21661 (2001) ("*Inmarsat Market Access Order*").

debt securities have already been listed on the Luxembourg Stock Exchange and are now being registered with the U.S. Securities Exchange Commission ("SEC"). As a result of these transactions and agreements ancillary thereto, Inmarsat is now majority-owned and controlled by equity funds advised by Apax Partners and Permira. Neither the Apax Partners' funds nor Permira's funds are affiliated with any former INMARSAT signatories.[3] As a result, former INMARSAT signatories no longer control Inmarsat.

## II. INMARSAT HAS MET THE ORBIT ACT'S INDEPENDENCE AND SUBSTANTIAL DILUTION REQUIREMENTS OF SECTION 621(2)

Section 621(2) of the ORBIT Act requires Inmarsat to "operate as [an] independent commercial entit[y], and have a pro-competitive ownership structure . . . ." To achieve such independence, Inmarsat is required to conduct an IPO of securities in accordance with section 621(5). In determining whether a public offering attains such substantial dilution, the Commission must "take into account the purposes and intent, privatization criteria, and other provisions of [the ORBIT Act], as well as market conditions."[4]

The December 2003 transaction and the February 2004 IPO gave Inmarsat the independence contemplated by Section 621(2) of the ORBIT Act. The main concern of Congress in requiring independence was to ensure that the government telecommunications monopolies that were typically INMARSAT signatories should not be able to control the privatized Inmarsat in a manner that could frustrate competition in the market for global satellite services. This concern has now been allayed with the Apax Partners and Permira funds acquiring a 52.28% beneficial interest in Inmarsat's new parent company, Inmarsat Group

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[3] Inmarsat Letter at 3.

[4] ORBIT Act § 621(2).

Holdings Limited, and certain members of Inmarsat management acquiring a further 4.75%. As a result, the total level of private, non-signatory ownership in Inmarsat is now 57% – more than double the level of dilution approved by the Commission when New Skies conducted its IPO pursuant to the ORBIT Act.[5] In addition, seventy of the eighty-five former signatories of INMARSAT no longer hold any ownership interest in the privatized Inmarsat as a result of these transactions. A Stratos affiliate, who succeeded Teleglobe as the Canadian signatory about six months prior to Inmarsat privatization, sold all but a nominal amount of shares in this transaction.

. As a result of all this dilution, the former INMARSAT signatories can no longer exercise *de jure* or *de facto* control over the privatized Inmarsat. Accordingly, Inmarsat has met the independence and substantial dilution requirements of Section 621(2).

## III. INMARSAT HAS MET THE IPO REQUIREMENTS OF SECTION 621(5)(A) OF THE ORBIT ACT

Section 621(5)(A) of the ORBIT Act requires Inmarsat to conduct an "initial public offering of securities." The term "securities" is not defined by the ORBIT Act, but in both common and statutory usage includes both equity and debt securities, as explained in Inmarsat's filing.[6] Thus, on a plain reading of the ORBIT Act, the IPO requirement in section 621(5)(A) may be satisfied by either an offering of debt as well as equity securities.

The text of the ORBIT Act makes it clear that the twin purposes of the IPO requirement were (1) to create an Inmarsat independent of the Signatories through substantial

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[5] *New Skies Sattellites, N.V.*, 16 FCC Rcd. 7482 (2001) (approving under the ORBIT Act an IPO in which non-INTELSAT signatories acquired a 23% ownership stake in New Skies).

[6] Inmarsat Letter at 8 n.27.

dilution; and (2) to achieve transparency through effective securities regulation.[7] As explained in Part II, above, Inmarsat has more than exceeded the substantial dilution requirement.

Inmarsat's public debt offering is entirely consistent with these purposes. As the Commission has previously explained, Inmarsat's privatization need only be "consistent with" the criteria in section 621 of the ORBIT Act. This standard connotes "a degree of flexibility" necessary for the Commission to "avoid frustrating Congressional intent to enhance competition in the U.S. telecommunications market by an overly narrow interpretation."[8] To the extent that a public offering of debt securities leads to a substantial dilution of ownership by former INMARSAT signatory, it should be considered consistent with the ORBIT Act and sufficient to satisfy its requirements.

In this case, the public debt offering was an essential component of the financing necessary to dilute the ownership of the former Inmarsat Signatories. As Inmarsat explained:

> In order to fund their acquisition of Inmarsat Venturers, and thereby dilute the ownership of the former Inmarsat Signatories, funds advised by Apax Partners and by Permira needed to raise financing from third parties. As is common in transactions of this type, they arranged for a bridge loan that facilitated a prompt closing of the equity investment. This bridge loan, in the amount of $365 million and with a maturity date of December 16, 2004, was used to fund partially the acquisition of Inmarsat Ventures and thereby dilute the ownership by former Inmarsat Signatories. This bridge loan was repaid in full on February 3, 2004 from the proceeds of the Series A Notes (described below). Moreover, the financial institutions providing this financing expressly contemplated that this bridge loan would be repaid from the proceeds of an IPO of Inmarsat debt securities.

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[7] *See* ORBIT Act § 621(2) ("The successor entities . . . of . . . Inmarsat shall conduct an initial public offering in accordance with paragraph (5) to achieve such independence."); § 621(5)(B) (requiring listing on one or more major stock exchanges with "transparent and effective securities regulation.").

[8] *See Inmarsat Market Access Order* at 21682 ¶ 35.

In this case, Inmarsat has achieved substantial dilution through a public offering of debt securities when it has been unable to complete a public offering of equity. As the Commission knows, Inmarsat has tried several times to conduct a public share offering to satisfy the ORBIT Act. On each occasion, it had to postpone the offering due to poor market conditions. By conducting an offering of debt securities in aid of the transaction with the Apax Partners and Permira funds, Inmarsat has achieved substantial dilution within the timeframe established by the ORBIT Act.

Accordingly, the Commission should find that Inmarsat has met the requirements of section 621(5)(A) of the ORBIT Act.

## IV. INMARSAT HAS COMPLIED WITH SECTION 621(5)(B) OF THE ORBIT ACT

Section 621(5)(B) of the ORBIT Act requires the shares of Inmarsat's successor entities to be listed for trading on one or more major stock exchanges with transparent and effective securities regulations.

While the listing of Inmarsat's debt securities on the Luxembourg Stock Exchange is not a listing of "shares" as such, it is nevertheless "consistent with" the statutory purpose of Section 621(5)(B) to provide transparency through effective securities regulation.

As more fully described in Inmarsat's filing, the listing of the debt securities and their registration with the SEC will subject Inmarsat to transparent and effective securities regulation.[9] In particular, Inmarsat will be required to provide essentially the same kinds of market disclosures as would a company whose shares were publicly listed on the Luxembourg exchange and registered with the SEC, including disclosures about "changes in shareholders'

[9] *Id.* at 9-15.

equity"[10] and "changes in business, management or control."[11] This should allay any concern that Inmarsat's shares would be subject to manipulation or that former INMARSAT signatories would regain control of the privatized Inmarsat surreptitiously.

As a result, because the public listing and registration of Inmarsat's debt securities would produce substantially the same benefits as the listing and registration of Inmarsat's shares, the Commission should find that Inmarsat has also satisfied the requirements of section 621(5)(B) of the ORBIT Act.

## V. CONCLUSION

For the reasons stated above, Stratos respectfully supports Inmarsat's request for a determination that it has satisfied the independence and initial public offering ("IPO") requirements of the ORBIT Act.

Respectfully submitted,

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Date: April 5, 2004

[10] *Id.* at 14.

[11] *Id.*

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**



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| In the Matter of | ) | |
| | ) | |
| **INMARSAT VENTURES LIMITED** | ) | File No. SAT-MSC-20040210-00027 |
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# REPLY COMMENTS OF STRATOS MOBILE NETWORKS, INC.

Stratos Mobile Networks, Inc. and Stratos Communications Inc. (collectively, "Stratos"), hereby replies to the opposition and comments filed by Mobile Satellite Ventures Subsidiary LLC ("MSV") and SES Americom, Inc. ("SES") respectively in this proceeding.[1] Stratos supports the request of Inmarsat Ventures Limited ("Inmarsat") for a determination that it has satisfied the independence and initial public offering ("IPO") requirements of the Open-Market Reorganization for the Betterment of International Telecommunications Act ("ORBIT Act").[2]

Stratos is a leading provider of mobile satellite services ("MSS") to the U.S. government and U.S. industry and is a major purchaser of space segment capacity on satellites

[1] *See* Opposition of Mobile Satellite Ventures Subsidiary LLC, *filed in* SAT-MSC-20040210-00027 (filed Apr. 5, 2004) ("*MSV Opposition*"); Comments of SES Americom, Inc., *filed in* SAT-MSC-20040210-00027 (filed Apr. 5, 2004) ("*SES Comments*").

[2] *See* Letter from Alan Auckenthaler, Inmarsat Ventures Limited, to Marlene H. Dortch, Federal Communications Commission (Feb. 10, 2004) ("Inmarsat Letter"). The Inmarsat Letter was placed on public notice on March 5, 2004 and assigned file number SAT-MSC-20040210-00027. *See* Public Notice, SAT-00197 (Mar. 5, 2004). Stratos has filed comments in support of the Inmarsat Letter. *See* Comments of Stratos Mobile Networks, Inc., *filed in* SAT-MSC-20040210-00027 (filed Apr. 5, 2004) ("*Stratos Comments*").

operated by Inmarsat, Iridium LLC ("Iridium"), and MSV for the provision of such services. Stratos and its customers are thus vitally interested in ensuring that the supply of space segment capacity for MSS remains competitive. Inmarsat has privatized in a manner "consistent with" the purposes and intent of the ORBIT Act's privatization criteria, and should therefore be granted unconditional access to the U.S. market. While assuring Inmarsat access to the U.S. market might not be good for Inmarsat's competitors (MSV and SES), it would benefit competition and the public interest by increasing consumer choices.

## I. THE ORBIT ACT DOES NOT REQUIRE "STRICT COMPLIANCE" WITH THE PRIVATIZATION CRITERIA

MSV and SES argue that Inmarsat has failed to comply with the requirements of the ORBIT Act because it has not conducted an initial public offering ("IPO") of shares and has not listed its shares on a major stock exchange.[3] However, contrary to the assertions of MSV and SES,[4] the ORBIT Act does not require "precise[]" or "strict compliance" with the privatization criteria set forth in Section 621. Rather, the statutory text and consistent Commission precedent established that the privatization of former intergovernmental organizations ("IGOs") under the ORBIT Act need only be "consistent with" such criteria.[5] This

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[3] *MSV Opposition* at 6-10; *SES Comments* at 10-21.

[4] *See MSV Opposition* at 5 ("To privatize in the pro-competitive manner required by the ORBIT Act, Inmarsat must comply precisely with the Act's requirements for an IPO."); *SES Comments* at 13 ("[T]he Commission should not judge Inmarsat's compliance with the IPO requirements by any standard other than one of strict compliance . . . .").

[5] *See* ORBIT Act § 601(b)(2). *See also Applications of Intelsat LLC*, 16 FCC Rcd. 12280, 12288 ¶ 22 (2001) ("*Intelsat Market Access Order*") ("In the context of the ORBIT Act criteria, we construe the 'consistent with' standard as inferring a degree of flexibility by requiring 'congruity or compatibility.' This flexibility allows us to avoid frustrating congressional intent to enhance competition in the U.S. telecommunications market which could result from an overly narrow interpretation."); *Comsat Corp. et al.*, 16 FCC Rcd. 21661, 21682 ¶ 35 (2001) ("*Inmarsat Market Access Order*") (same).

standard connotes "a degree of flexibility" necessary for the Commission to "avoid frustrating Congressional intent to enhance competition in the U.S. telecommunications market by an overly narrow interpretation."[6] Accordingly, the determination of whether Inmarsat's privatization is consistent with the requirements of the ORBIT Act should be based on whether it achieves the goals of the Act and not on whether there has been letter-perfect compliance with the statutory text, or with the idealized standard urged by Inmarsat's competition.

## II. THE INMARSAT PRIVATIZATION ACHIEVES THE GOALS OF THE ORBIT ACT

The ORBIT Act makes plain that the twin purposes of the IPO and listing requirements were (1) to create an Inmarsat independent of the former signatories through substantial dilution of their ownership interests; and (2) to achieve transparency and effective securities regulation. The Inmarsat privatization is consistent with and has achieved both goals.

### A. The Privatized Inmarsat is Independent of the Former Signatories

As explained in the Inmarsat Letter, the public debt offering and related transactions have created a privatized Inmarsat that is not controlled by the former signatories of INMARSAT. Moreover, there is no question that the aggregate ownership of former signatories has been diluted well beyond the level previously held by the Commission to be sufficient to meet the requirements of the ORBIT Act. The transactions have resulted in more than 57% of the shares of Inmarsat being held by non-Signatories, far in excess of the 25% threshold the Commission established in *New Skies*.[7]

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[6] *Id.* at 21682 ¶ 35.

[7] *See New Skies Satellites, N.V.*, 16 FCC Rcd. 7482 (2001).

MSV and SES assert that this is nevertheless not consistent with the ORBIT Act's privatization criteria because ownership of Inmarsat's shares are not broadly held by the public. They have invented a new requirement not found in the statute. The ORBIT Act requires "substantial dilution," not "broad distribution." The purpose of the substantial dilution requirement is to ensure that the privatized entities are independent of the former signatories.[8] This purpose is better fulfilled if a few investors control a majority of shares than if a minority of shares is widely dispersed.

Indeed, the International Bureau recently decided not to investigate New Skies' share buy-back program under the ORBIT Act, because it had the effect of further diluting the ownership interests of former INTELSAT signatories in New Skies, even if the share buy-back also narrowed private ownership of New Skies.[9]

### B. The Listing of Inmarsat's Debt Securities Subjects Inmarsat to Transparent and Effective Securities Regulation

As fully explained in the Inmarsat Letter, the listing of Inmarsat's debt securities on the Luxembourg Stock Exchange and registration with the U.S. Securities Exchange Commission ("SEC") will subject the privatized Inmarsat to transparent and effective securities regulation, consistent with Section 621(5)(B) of the ORBIT Act.[10] The ORBIT Act does not require an "IPO of equity securities in the United States," as SES suggests.[11] Inmarsat can fulfill the listing requirement through a listing on any "major stock exchange with transparent and

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[8] ORBIT Act § 621(2).

[9] *See New Skies Satellites, N.V. Continuing Access to the U.S. Market*, 18 FCC Rcd. 18501, at ¶ 9 (2003).

[10] Inmarsat Letter at 4-5, 9-15.

[11] *SES Comments* at 19.

effective securities regulation."[12] Inmarsat is already trading on the Luxembourg Stock Exchange and is subject to European Union securities regulation. Further, Inmarsat has also filed a registration statement with the U.S. Securities and Exchange Commission to be listed in the U.S. PORTAL Market managed by the National Association of Securities Dealers. Inmarsat is required to make regular disclosures under European Union and the U.S. Securities Exchange Act of 1934. If these disclosures are deemed sufficient to protect European and U.S. investors, then they should also be sufficient for meeting the transparency requirements of the ORBIT Act.[13] Since Inmarsat will be required to report changes in ownership, management and control,[14] any increased participation by former Signatories will be readily detected.

## III. COMPETITION WILL NOT BE ENHANCED BY DENYING OR DELAYING INMARSAT UNCONDITIONAL ACCESS TO THE U.S. MARKET

As the Commission has explained, the reason for avoiding an unduly narrow interpretation of the ORBIT Act's privatization criteria is to "avoid frustrating Congressional intent to enhance competition in the U.S. telecommunications market . . . ."[15] In this case, Congress's intent would be frustrated if Inmarsat were to be denied unconditional access to the U.S. market simply because the IPO was debt securities instead of equity. To require Inmarsat to

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[12] ORBIT Act § 621(5)(B).

[13] SES argues that listing on the Luxembourg Stock Exchange would not subject Inmarsat to certain corporate governance requirements in the listing rules of the New York Stock Exchange and NASDAQ. *SES Comments* at 19-20. However, there is nothing to indicate that "transparent and effective securities regulation" in the ORBIT Act means regulation that is the same as the rules for a company listed on these specific exchanges. In any event, the listing rules referred to by SES – NYSE Listing Rules 3.03.01(A), 303A and NASDAQ Listing Rule 4350 – were only adopted recently in response to the Sarbanes-Oxley Act of 2002, P.L. 107-204, and so such requirements were not even contemplated by Congress at the time it passed the ORBIT Act.

[14] Inmarsat Letter at 14.

[15] *Inmarsat Market Access Order* at 21682 ¶ 35.

go further and issue shares to the public could deprive U.S. consumers of unconditional access to Inmarsat without any guarantee that Inmarsat would be any more independent or that the ownership of former signatories would be any more diluted than is the case now.

MSV rehashes a litany of supposedly anti-competitive conduct actions as a predicate for its conclusion that "Inmarsat must comply precisely with the Act's requirements for an IPO."[16] The Commission has previously rejected similar claims in this very proceeding.[17] Even if the MSV complaints had any merit, requiring "precise compliance" would not remedy MSV's longstanding complaints.

Delaying Inmarsat's full access to the U.S. market may be good for the competitors of Inmarsat, such as MSV and SES. However, such delay would not be good for competition in the U.S., nor would it be good for purchasers of MSS such as Stratos and its customers.

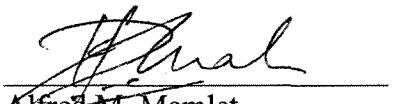
[16] MSV Comments at 4-5.

[17] *Inmarsat Market Access Order* at ¶¶ 69-76.

## IV. CONCLUSION

For the reasons stated above, the Commission should determine that Inmarsat has satisfied all remaining requirements of the ORBIT Act and is now entitled to unconditional access to the U.S. market.

Respectfully submitted,



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Date: April 20, 2004